

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZIONS BANCORPORATION, No. C 10-3481 CW
Plaintiff,
v.
U.S. ETHERNET INNOVATIONS, LLC,
Defendant.

U.S. ETHERNET INNOVATIONS, LLC, No. C 10-3724 CW
Plaintiff,

v.
ACER, INC.; ACER AMERICA CORPORATION; APPLE, INC.; ASUS COMPUTER INTERNATIONAL; ASUSTEK COMPUTER, INC.; DELL, INC.; FUJITSU, LTD.; FUJITSU AMERICA, INC.; GATEWAY, INC.; HEWLETT PACKARD CO.; SONY CORPORATION; SONY CORPORATION OF AMERICA; SONY ELECTRONICS INC.; TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; and TOSHIBA AMERICA INFORMATION SYSTEMS, INC.,

Defendants.

INTEL CORPORATION; NVIDIA CORPORATION; MARVELL SEMICONDUCTOR, INC.; Atheros COMMUNICATIONS, INC.; and BROADCOM CORPORATION,

Intervenors.

United States District Court
For the Northern District of California

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U.S. ETHERNET INNOVATIONS, LLC,,

Plaintiff,

v.

AT&T MOBILITY LLC; BARNES &
NOBLE, INC.; CLAIRE'S BOUTIQUES,
INC.; J. C. PENNEY COMPANY, INC.;
SALLY BEAUTY HOLDINGS, INC.; ANN
TAYLOR STORES CORPORATION; ANN
TAYLOR RETAIL, INC.; HARLEY-
DAVIDSON, INC.; HARLEY-DAVIDSON
MOTOR COMPANY, INC.; KIRKLAND'S
INC.; KIRKLAND'S STORES, INC.;
MACY'S, INC.; MACY'S RETAIL
HOLDINGS, INC.; MACY'S WEST
STORES, INC.; NEW YORK & COMPANY,
INC.; LERNER NEW YORK, INC.;
RADIOSHACK CORPORATION; RENT-A-
CENTER, INC.; and THE DRESS BARN,
INC.,

Defendants.

AND ALL RELATED CLAIMS AND
COUNTERCLAIMS

No. C 10-5254 CW

ORDER DENYING AT&T
DEFENDANTS'
MOTIONS TO DISMISS
(Docket Nos. 76
and 134 in Case
No. 10-5254),
DENYING RENEWED
REQUEST TO SEVER
CLAIMS AGAINST
INTERVENORS AND TO
SEVER AND STAY
CLAIMS AGAINST
ACER DEFENDANTS,
AND DIRECTING
PARTIES TO FILE
BRIEFS ADDRESSING
STAY OF CLAIMS
AGAINST AT&T
DEFENDANTS AND
ZIONS
BANCORPORATION

1 The Court has reviewed the case management statement filed by
2 the parties¹ on November 2, 2012 and addresses various matters
3 raised therein. See Docket No. 649 in Case No. 10-3724.

4 The parties note that AT&T Defendants' motions to dismiss in
5 U.S. Ethernet Innovations, LLC v. AT&T Mobility (the AT&T case),
6 Docket Nos. 76 and 134 in Case No. 10-5254, remain pending. The
7 parties dispute whether supplemental submissions should be filed
8 regarding the motions. The Court has reviewed the papers already
9 filed in connection with the motions and finds that no further
10 briefing is necessary. The Court takes the motions under
11 submission on the papers and DENIES them. Plaintiff's amended
12 complaint is sufficiently plead to inform AT&T Defendants of its
13 claims against them pursuant to the relevant legal standards. See
14 In re Bill of Lading Transmission and Processing System Patent
15 Litig., 681 F.3d 1323, 1331-46 (Fed. Cir. 2012). Further, the
16 Court is not persuaded that the pleading unfairly prejudices AT&T

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19 ¹ For the purposes of this Order, the Court adopts the
20 parties' terminology as follows: (1) Intervenors for Atheros
21 Communications, Inc., Intel Corporation, Marvel Semiconductor,
22 Inc., NVIDIA Corporation and Broadcom Corporation; (2) Acer
23 Defendants for Acer, Inc., Acer America Corporation, Apple, Inc.,
24 ASUS Computer International, ASUSTeK Computer, Inc., Dell, Inc.,
25 Fujitsu Ltd., Fujitsu America, Inc., Gateway, Inc., Hewlett
26 Packard Co., Sony Corporation; Sony Corporation of America, Sony
27 Electronics Inc., Toshiba Corporation, Toshiba America, Inc., and
28 Toshiba America Information Systems, Inc.; (3) AT&T Defendants for
AT&T Mobility, LLC; Barnes & Noble, Inc., Claire's Boutiques,
Inc., J.C. Penney Company, Inc., Sally Beauty Holdings, Inc., Ann
Taylor Stores Corporation, Ann Taylor Retail, Inc., Harley-
Davidson, Inc., Harley-Davidson Motor Company, Inc., Kirkland's
Inc., Kirkland's Stores, Inc., Macy's, Inc., Macy's Retail
Holdings, Inc., Macy's West Stores, Inc., New York & Company,
Inc., Lerner New York, Inc., Radioshack Corporation, Rent-A-
Center, Inc., The Dress Barn, Inc.; and (4) Defendants for Acer
Defendants, AT&T Defendants and Zions Bancorporation collectively.
The Court refers to U.S. Ethernet Innovations, Inc. as Plaintiff.

1 Defendants' ability to prepare a proper defense. See, e.g.,
2 Microsoft Corp. v. Phoenix Solutions, Inc., 741 F. Supp. 2d 1156,
3 1159 (C.D. Cal. 2010) (noting that the court "requires the prompt
4 filing of infringement contentions, which put the party accused of
5 infringement on detailed notice of the basis for the allegations
6 against it"). More than a year and a half ago, Plaintiff served
7 upon AT&T Defendants its infringement contentions, which, pursuant
8 to Patent Local Rule 3-1, provide the specificity that these
9 Defendants seek.

10 In the case management statement, the parties agree that the
11 issues of severance and stays should be addressed before discovery
12 begins and other case management dates are set.² Defendants and
13 Intervenor represent that Intervenor is suppliers of networking
14 adapter chips, Acer Defendants are computer makers, and AT&T
15 Defendants and Zions Bancorporation are end users of computers
16 with network adapters. They seek to sever the claims against the
17 Intervenor into separate cases against each Intervenor and to
18 stay the cases against all Defendants pending resolution of the
19 cases against Intervenor. Plaintiff asserts that Defendants "are
20 primarily computer manufacturers and sellers" and opposes any
21 severance or stay.

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24 ² These three cases were administratively related on March 7,
25 2011. See Docket No. 43 in Case No. 10-3481 (finding Zions
26 Bancorporation v. U.S. Ethernet Innovations, LLC, Case No. 10-3481
27 (the Zions case), related to the AT&T case and U.S. Ethernet
28 Innovations, LLC v. Acer, Inc., Case No. 10-3724 (the Acer case),
and reassigning the Zions case); Docket No. 497 in Case No.
10-3724 (noting that "it is the Court's practice to not relate
cases that are already assigned to it," but relating the AT&T and
Acer cases "for the purposes of claim construction coordination").

1 In the Acer case, Intervenors and Acer Defendants previously
2 moved to sever the claims against Intervenors into separate cases,
3 to sever and stay the claims against Acer Defendants, and to stay
4 the claims against AT&T Defendants and Zions Bancorporation.
5 Docket No. 449 in Case No. 10-3724. The judge previously assigned
6 to these cases denied the motion as premature without prejudice to
7 renewal after a technology tutorial and found that Intervenors and
8 Acer Defendants did not have standing to seek a stay on behalf of
9 the other parties. Docket No. 475 in Case No. 10-3724. AT&T
10 Defendants subsequently filed a motion to stay in the AT&T case,
11 which the judge granted "pending the tutorial in the Acer case and
12 further order of the Court." Docket Nos. 245, 246 in Case No. 10-
13 5254. After the tutorial, the Court issued an order finding that
14 "a single Markman to construe all the disputed claims would be
15 more efficient than any bifurcation at this time," and providing
16 that it "would conduct a claim construction hearing and issue a
17 Claim Construction Order that will serve as the law of the case
18 prior to bifurcation." Docket No. 497 in Case No. 10-3724; Docket
19 No. 255 in Case No. 10-5254. At that time, the Court also lifted
20 the stay imposed in the AT&T case so that the parties in that case
21 could "meet and confer with the Defendants in the Acer case and
22 participate in the claim construction process." Id. Shortly
23 thereafter, the Court denied AT&T Defendants' motion for leave to
24 file a motion for reconsideration, in which they argued the AT&T
25 case should remain stayed; the Court noted that, "based on the
26 claim construction, the Court would be better situated to make
27 determinations on which Defendants were properly in the case."
28 Docket No. 263 in Case No. 10-5254.

1 The Court deems the representation in the case management
2 statement that Intervenors and Acer Defendants intend to refile
3 their motion to sever and stay certain claims as their renewed
4 motion. The Court has reviewed the papers filed by the parties in
5 connection with Intervenors' and Acer Defendants' motion to stay
6 and to sever, AT&T Defendants' motion to stay and AT&T Defendants'
7 motion for reconsideration of the order lifting the stay in the
8 AT&T case, as well as the case management statement, the claim
9 construction orders and other relevant documents. The Court
10 DENIES the request to sever the claims against Intervenors and
11 Acer Defendants prior to trial. These claims involve common
12 questions of law and fact that would be most efficiently handled
13 on a consolidated basis for pretrial purposes. After all case
14 dispositive motions have been decided, the Court will determine
15 whether to sever the claims against the various Defendants and
16 Intervenors for trial. The Court also DENIES the request to stay
17 the claims against Acer Defendants pending resolution of the
18 claims against Intervenors.

19 The Court ORDERS that Plaintiff, AT&T Defendants and Zions
20 Bancorporation file supplemental briefs addressing whether the
21 claims against AT&T Defendants and Zions Bancorporation should be
22 stayed pending resolution of the claims against Intervenors and
23 Acer Defendants. AT&T Defendants and Zions Bancorporation shall
24 file a joint brief of ten pages or less within seven days of the
25 date of this Order. Although Acer Defendants and Intervenors are
26 not required to file a supplemental brief, they may join the brief
27 filed by AT&T Defendants and Zions Bancorporation. Plaintiff
28 shall file its brief of ten pages or less within seven days

1 thereafter. The issue will be decided on the papers. Once it has
2 been, discovery may commence and the Court will ask the parties to
3 submit joint or separate proposed case management schedules.

4 IT IS SO ORDERED.

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6 Dated: 12/7/2012

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8 CLAUDIA WILKEN
9 United States District Judge
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